



June 27, 2002

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
2014 Main, Room 501
Dallas, Texas 75201

OR2002-3509

Dear Ms. Middlebrooks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164946.

The Dallas Police Department (the “department”) received a request for the following information:

[A]ll police reports or arrest reports filed in the White Rock Lake vicinity, including Norbuck park (Northwest Hwy and Buck[n]er Blvd) involving public lewdness or any other indecency charge for the past 3 years.

[A]ll police reports or arrest reports filed in the White Rock Lake vicinity involving other kinds of crimes including assault, theft, etc. for the past year.

[A]ll complaints filed with the police department from citizens in Dallas about the problem of public lewdness or indecency in the park area.

[N]umber of vice squad officers, their assignments for the past two years, the focus of the undercover operations, the amount of money spent on undercover operations, [and] number of arrests made and fines collected for the past two years.

You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.130 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.¹

We first note that the department has not submitted any information that is specifically responsive to the requests for complaints filed with the department from citizens regarding public lewdness or indecency in the park area and for vice squad officers' assignments for the past two years, the focus of undercover operations, the amount of money spent on undercover operations, [and] the number of arrests made and fines collected for the past two years. We therefore assume that the department has released any information, to the extent that it exists, that is responsive to these aspects of this request for information. If not, then the department must do so at this time. See Gov't Code §§ 552.301, 302; Open Records Decision No. 664 (2000). However, chapter 552 of the Government Code does not require the department to release information that did not exist when it received this request or to create responsive information. See Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

We also note that some of the representative sample information that the department has submitted is not responsive to any aspect of this request for information. We have marked the submitted information that is not responsive to this request. This decision does not address the non-responsive information.

The department claims that some of the remaining information is confidential under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses the common-law right to privacy. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. See *Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). When a law enforcement agency compiles criminal history information that pertains to a particular individual, the compiled information takes on a character that implicates that individual's right to privacy in a manner that the same information in an uncompiled state does not. See *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); see also Open Records Decision No. 616 at 2-3 (1993). Therefore, information compiled by the department that depicts a particular individual as a criminal suspect, arrestee, or defendant must be withheld from disclosure under section 552.101 of the Government Code in conjunction with *Reporters Committee*.

¹This letter ruling assumes that the submitted representative samples of information are truly representative of the responsive information as a whole. This ruling neither reaches nor authorizes the department to withhold any responsive information that is substantially different from the submitted information. See Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

Common-law privacy under section 552.101 also protects the specific types of information that the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation*. See 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has since concluded that other types of information also are private under section 552.101. See Open Records Decision Nos. 659 at 4-5 (1999) (summarizing information attorney general has determined to be private), 470 at 4 (1987) (illness from severe emotional job-related stress), 455 at 9 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 343 at 1-2 (1982) (references in emergency medical records to drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress). We have marked the information that the department must withhold under section 552.101 in conjunction with common-law privacy.

The department also raises section 552.101 with regard to a private individual's social security number. A social security number may be excepted from disclosure under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if a governmental body obtained or maintains the social security number pursuant to any provision of law enacted on or after October 1, 1990. See Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that the social security number in question is confidential under section 405(c)(2)(C)(viii)(I) of the federal law. You have cited no law, and we are aware of no law, enacted on or after October 1, 1990 that authorizes the department to obtain or maintain a social security number. Thus, we have no basis for concluding that this social security number was obtained or is maintained pursuant to such a law and is therefore confidential under the federal law. We caution the department, however, that chapter 552 of the Government Code imposes criminal penalties for the release of confidential information. See Gov't Code §§ 552.007, .352. Therefore, before releasing a social security number, the department should ensure that it was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

Next, we address the department's claims under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" A governmental body that raises section 552.108 must reasonably explain, if the requested information does not supply an explanation on its face, how and why section 552.108 is applicable to that information. See Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You represent to this office that report number 0347726-K relates to a pending criminal investigation. Based on your representation, we find that section 552.108(a)(1) is applicable to that report. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

Section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. The department must release basic information, including a detailed description of the offense, even if this information does not literally appear on the front page of an offense or arrest report. *See Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing the types of information deemed public in *Houston Chronicle*). The department may withhold the remaining information in report number 0347726-K under section 552.108(a)(1).

The department also raises section 552.108 with regard to a police officer’s pager number. Section 552.108(b)(1) excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release would interfere with law enforcement or prosecution.” You state that the officer uses this pager number to carry out his law enforcement responsibilities. You assert that the release of his pager number would interfere with law enforcement. Based on your representations, we conclude that the department may withhold the pager number under section 552.108(b)(1). *See also* Open Records Decision Nos. 531 at 2 (1989) (statutory predecessor protected records held by law enforcement agency if their release would interfere with law enforcement and crime prevention), 506 (1988) (statutory predecessor protected cellular mobile phone numbers assigned to persons with specific law enforcement responsibilities).

The department raises section 552.117 of the Government Code with regard to a police officer’s home telephone number. Section 552.117(2) excepts from disclosure the home address, home telephone number, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer has complied with section 552.024 of the Government Code. Section 552.117(2) adopts the definition of peace officer that is found at article 2.12 of the Code of Criminal Procedure. We agree that the department must withhold this officer’s home telephone number under section 552.117(2) of the Government Code.

Lastly, we address the department’s claim under section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to:

- (1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov’t Code § 552.130(a)(1)-(2). We have marked information that relates to driver’s license, license plate, and vehicle identification numbers. To the extent that this information relates to Texas driver’s license, license plate, and vehicle identification numbers, it must be withheld from disclosure under section 552.130.

In summary, information compiled by the department that depicts a particular individual as a criminal suspect, arrestee, or defendant must be withheld from disclosure under section 552.101 of the Government Code in conjunction with *Reporters Committee*. The department also must withhold the information that is protected by common-law privacy under section 552.101. A private individual's social security number may be excepted from disclosure under section 552.101 in conjunction with federal law. Report number 0347726-K is excepted from disclosure under section 552.108(a)(1) of the Government Code, with the exception of the basic information that must be released under section 552.108(c). The police officer's pager number is excepted from disclosure under section 552.108(b)(1). The police officer's home telephone number is excepted from disclosure under section 552.117(2). The department must withhold information that relates to a Texas driver's license, license plate, or vehicle identification number under section 552.130. The rest of the submitted responsive information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

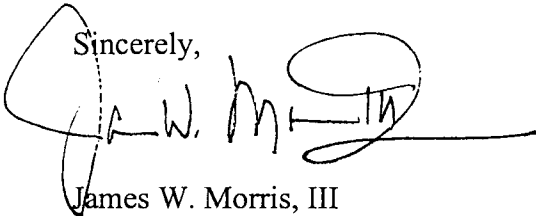
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", with a large, stylized flourish extending from the end of the signature.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 164946

Enc: Marked documents

c: Ms. Becky Oliver
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(w/o enclosures)